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| 09/896,548 | 06/29/2001 | Adrianus Josephes van den Nieuwelaar | V0028/260425 | 4345 |
| 23370 | 7590 | 11/17/2003 | EXAMINER | |
| JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309 | | | FRANK, ELLIOT L | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|----------------------------|---------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/896,548 | VAN DEN NIEUWELAAR ET AL. |
| | Examiner Elliot L Frank | Art Unit 2125 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 October 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-33 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 June 2001 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6) Other: _____

DETAILED FINAL ACTION

Response to Amendment

1. The following FINAL office action is a response to applicant's amendment (A), paper number 5, filed on 6 October 2003.
2. Applicant's changes in response to items 1-3 of the previous office action have been considered and are accepted.
3. Claims 1-33 remain pending in the application. No claims were altered or added in this amendment.
4. The following rejections are maintained from the previous office action. Responses to the applicant's arguments follow.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,5,6 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Montanari et al. (USPN 5,478,990 A).

The limitations of the aforementioned claims, and the relevant citations in Montanari et al. are as follows:

1. A method for processing a slaughter product (column 1, lines 7-12)

comprising:

providing at least one processing station for performing at least one processing on the slaughter product, wherein at least one parameter of the processing is adjustable (column 8, lines 20-34);

recording property data relating to at least one property of the slaughter product (column 8, lines 35-45);

recording relationship data relating to at least one relationship between parameter data relating to the at least one parameter of the processing and the property data;

recording demand data relating to at least one desired property of the slaughter product (relationship and demand data are discussed at column 11, lines 17-44);

and

controlling the processing of the slaughter product by adjusting the at least one parameter of the processing on the basis of at least part of the property data, the relationship data, and the demand data (column 13, lines 49-67).

5. the method of claim 1, further comprising: controlling the processing of the slaughter product by selecting a routing for the processing of the slaughter product on the basis of at least part of the property data, relationship data, and the demand data (column 13, lines 49-67).

Claims 6 and 10 for a device include the same functional limitations as claims 1 and 5, and therefore are anticipated by the same citations in Montanari et al.

11. The device of claim 6, wherein the slaughter product property recording means comprise: a data input means for inputting data relating to the slaughter product; and a data-processing system connected to the data input means (column 4, lines 11-52).

12. The device of claim 6, wherein the slaughter product property recording means comprises: first weighing means for weighing the slaughter product prior to a processing; second weighing means for weighing the slaughter product after the processing; and a data-processing system for recording weight data determined by the first and second weighing means (column 13, lines 1-17).

The limitations of claims 1,5,6 and 10-12 are read completely in Montanari et al.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2,3,7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari et al. (USPN 5,478,990 A) in view of Haagensen (USPN 6,104,966 A).

Claims 2 and 3 depend from claim 1. Claims 7 and 8 depend from claim 6.

Claims 1 and 6 have been shown to be anticipated by Montanari et al.

While Montanari does read on the computerized slaughter control system of the instant invention, it does not read upon the additional specific requirements of claims 2 and 3 as follows:

2. The method of claim 1, further comprising: recording data that indicates the availability of the at least one processing station.

3. The method of claim 1, further comprising: recording data that indicates the availability of the slaughter product.

Haagensen et al., analogous to Montanari in that both systems deal with computer controlled slaughter processing (Haagensen, column 1, lines 11-36), reads on the additional limitations of claims 2 and 3 at column 7, line 63-column 8, line 62 wherein it describes a processing system that anticipates the location of slaughter product combined with sensors feeding back the actual position of slaughter product, which allows the system to know the status both of the processing stations and the product to be processed.

Claims 7 and 8 for a device contain the same functional limitations as claims 2 and 3, and are therefore obvious in view of the same citations in the combined references.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the elements of Haagensen into the Montanari system to have allowed for the tracking of carcasses and primals starting at the killing floor throughout the processing plant (Haagensen, column 2, lines 22-53).

9. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari et al. (USPN 5,478,990 A) in view of Baker et al 5,226,118).

Claim 4 depends from claim 1. Claim 9 depends from claim 6. Claims 1 and 6 have been shown to be anticipated by Montanari et al.

While Montanari does read on the computerized slaughter control system of the instant invention, it does not read upon the additional specific requirements of claim 4 as follows:

4. The method of claim 1, further comprising: recording data that indicates the availability of the at least one staff member at the at least one processing station.

Baker, a system generally applicable to any computer controlled process (Baker et al., column 1, lines 39-52) reads on the requirements of claim 4 at column 10, lines 22-39 wherein an operator availability data structure is described.

Claim 9 for a device contains the same functional limitations as claim 4, and is therefore obvious in view of the same citations in the combined references.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the elements of Baker et al. into Montanari et al. to have created a process system including a database management and analysis tool with simple control and display functions (Baker et al., column 1, lines 22-32).

10. Claims 13-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montanari et al. (USPN 5,478,990 A) in view of Ripol et al. (USPN 5,401,209 A).

Claims 13-33 depend from claim 6. Claim 6 has been shown to be anticipated by Montanari et al.

While Montanari does read on the computerized slaughter control system of the instant invention, it does not read upon the additional specific requirements of claim 13 as follows:

13. The device of claim 6, wherein the processing station is a stunning station comprising:

a stunning device for stunning the slaughter product, wherein the processing parameter adjustment means is adapted to adjust a parameter of a stunning process carried out by the stunning device; and a data-processing system for controlling the processing parameter adjustment means.

Ripol et al., analogous to Montanari et al. in that both are systems for computer controlled slaughter processing (column 1, lines 10-16), reads on the additional requirements of claim 13 at column 12, line 32-column 13, line 20 wherein a computer controlled stunning process is described.

Claims 14-20 require a similar computerized control system applied to the following well-known animal slaughter processes including: exsanguinations, scalding, massage, buffer, head-pulling, cutting, rolling, waste removal, conveying, correction, cooling, packaging, positioning and oven control. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have

applied computer control to the aforementioned process in the same manner as the process described in Ripol et al. to have improved the quality of the process where high throughput is required (Ripol et al., column 1 lines 18-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the elements of Ripol et al. into the Montanari system to have created an animal processing system including a stunning element that improves both productivity and quality (Ripol et al., column 3, lines 19-50).

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Response to Arguments

12. Applicant's arguments filed 6 October 2003 have been fully considered but they are not persuasive.

- a. In response to the applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon

which applicant relies (i.e., specific examples of the type of processing and property data to be correlated) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

- b. Applicant has argued that the primary reference Montanari et al. (USPN 5,478,990 A) does not anticipate all of the requirements of claims 1 and 6. The examiner respectfully disagrees with the narrow interpretation that Montanari is only used for tracking.
- c. Montanari et al. does anticipate the broadest reasonable interpretation of the claim requirements. Claims 1 and 6 require a meat production process where, given a correlation of demand data to a product property, the process is controlled by modifying a process parameter that corresponds to that property. Montanari reads on this requirement as follows:
 - 1. There is a demand for natural, organic and contamination free meat (column 1, lines 48-61 and column 2, line 56-column 3, line 5).
 - 2. In the cited reference, an example of parameter data is the "...deleterious effects on the meat derived from such animals" (column 11, line 25). This data can be collected and recorded at any stage of the process in the form of pathogen testing (column 12, lines 30-40).

3. The processing data is determining "whether the animal ingested material treated with undesired chemicals such as pesticides or herbicides, or [whether] various other environmental conditions may have had any deleterious effects..." (column 11, line 22).
4. In this case the process control aspect is present when, "this information allows grazing practices and performances to be monitored and properly administered (column 11, line 31).

d. Therefore, Montanari et al. does read on the limitations of claims 1 and 6 wherein an integral part of the meat production process (column 8, lines 20-34) utilizes correlated information to alter or improve the overall process (column 7, line 62-column 8, line 19).

Conclusion

13. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elliot L Frank whose telephone number is (703) 305-5442. The examiner can normally be reached on M-F 7-4:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P Picard can be reached on (703) 308-0538. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.



ELF
November 7, 2003

LEO PICARD
SUPERVISORY PATENT EXAMINER
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